IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR
and
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION NOs :6966, 6967, 6968 and 6969 of 2006

Dated:7th December 2006.

WRIT PETITION NO :6966 of 2006

Between:
M/s. Sri Venkateswara Cashew Manufacturers,
Vetapalem, Prakasam District.

..... PETITIONER

AND

The Commercial Tax Officer, Chirala, Prakasam District
and others.

.....RESPONDENTS

WRIT PETITION NO :6967 of 2006

Between:
M/s. Sri Venkateswara Cashew Manufacturers,
Vetapalem, Prakasam District.

..... PETITIONER

AND

The Commercial Tax Officer, Chirala, Prakasam District
and others.

.....RESPONDENTS

WRIT PETITION NO :6968 of 2006

Between:
M/s. Sri Venkateswara Cashew Manufacturers,
Vetapalem, Prakasam District.

..... PETITIONER

AND

The Commercial Tax Officer, Chirala, Prakasam District
and others.

.....RESPONDENTS

WRIT PETITION NO :6969 of 2006

Between:
M/s. Sri Venkateswara Cashew Manufacturers,
Vetapalem, Prakasam District.

..... PETITIONER

AND

The Commercial Tax Officer, Chirala, Prakasam District
and others.

.....RESPONDENTS

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THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE D.APPA RAO

WRIT PETITION NOs :6966, 6967, 6968 and 6769 of 2006

ORAL COMMON ORDER:
(Per the Hon'ble Sri Justice J.Chelameswar)

The petitioner is the same in all these four writ petitions; a proprietary concern and a registered dealer both under the A.P.G.S.T. Act and the C.S.T. Act, and an assessee on the rolls of the 1st respondent, carrying on business in the sale of cashew nut. It appears from the pleadings before us that the petitioner purchases raw-cashew nut, process them for obtaining cashew kernel and sale of the same either with or without decartation. The processing of the cashew nut was described by the Supreme Court in the following lines:

> " Cashewnut is projected and visible outside the fruit, unlike the other nuts which are enclosed inside the fruit. These raw cashew nuts purchased from agriculturist are first dried to remove moisture. They are then roasted by expert labourers, who see to it that the nuts are roasted to the required level without getting spoilt. Then the roasted nuts are split by another set of expert labourers to remove the coating shell and to obtain the kernels. These kernels are covered with thin brown skin known as testa. To remover this testa heat treatment is given in a specialized oven called Borma. The kernels are then entrusted to a band of expert labourers who manually remove the testa which gets separated in the Borma oven. This removal of testa is a very delicate operation as also the Borma oven process. Then finally the marketable kernel emerges these are then graded as white wholes, splits, broken, butts etc."

Under G.O.Ms.No.108, dated 20-05-1996, the State of Andhra Pradesh propounded an incentive scheme for the industries and one of the incentives is that of a tax holiday insofar as the sales tax is concerned. The G.O., contemplates the issuance of eligibility certificate by the Industries Department on the satisfaction that a particular applicant clarifies for the some, or all the benefits propounded in the abovementioned incentive scheme. Pursuant to an application by the petitioner, such a certificate was granted in favour of the petitioner by the Industries Department on 10-08-2000. According to the said certificate, exemption of sales tax to a tune of Rs.22,15,190/- is available to the petitioner during the period commencing from 24-02-2000 to 23-02-2007.

For the assessment years 2000-01, 2001-02,

2002-03 and 2003-04, the 1st respondent assessed the petitioner's liability under the sales tax, after duly giving credit to the benefit of exemption referred to earlier. However, the

2nd respondent chose to revise the said assessments by his orders dated 22-03-2004l, 30-10-2003 and 06-05-2005, in exercise of the powers under Section 20(2) of the A.P.G.S.T Act read with Section 9(2) of the C.S.T. Act. The substance of the 2nd respondent's stand is that the eligibility certificate issued by the Industries Department in favour of the petitioner mentions the petitioner's activity to be an activity of processing of cashew nuts, but does not mention the processing of cashew kernel too, therefore, the turnover of the petitioner insofar it pertains to the sale of cashew kernel is not entitled for any consideration under the exemption G.O., referred to earlier. Hence, the present writ petitions with the respective prayers:

> " For the reasons stated above, it is prayed that this Hon'ble Court may be pleased to issue an appropriate writ or order or direction particularly in the nature of Writ of Mandamus declaring the action of the 2nd respondent in withdrawing the benefit of exemption of Central Tax granted to the petitioner through the final eligibility certificate by passing the impugned revision order in proceedings RV No.42/ 05-06/A6 dt. 17-9-2005 for the assessment year 2001-2002 and demanding tax on the turnover of inter-state sale of cashew kernel processed by the petitioner in its unit as illegal, arbitrary and without authority of law and jurisdiction and set aside the same and also declare that the petitioner's product viz., Small White Pieces (S.W.P) [cashew kernel pieces] is entitled for sales tax exemption in terms of the final eligibility certificate granted by the 3rd

respondent and pass such other order or orders as the Hon'ble court may deem fit and proper in the circumstances of the case."

"For the reasons stated above, it is prayed that this Hon'ble Court may be pleased to issue an appropriate writ or order or direction particularly in the nature of Writ of Mandamus declaring the action of the 2nd respondent in withdrawing the benefit of exemption of Central Tax granted to the petitioner through the final eligibility certificate by passing the impugned revision order in proceedings RV No.44/ 05-06/A6 dt. 17-9-2005 for the assessment year 2003-2004 and demanding tax on the turnover of inter-state sale of cashew kernel processed by the petitioner in its unit as illegal, arbitrary and without authority of law and jurisdiction and set aside the same and also declare that the petitioner's product viz., Small White Pieces (S.W.P) [cashew kernel pieces] is entitled for sales tax exemption in terms of the final eligibility certificate granted by the 3rd respondent and pass such other order or orders as the Hon'ble court may deem fit and proper in the circumstances of the case."

"For the reasons stated above, it is prayed that this Hon'ble Court may be pleased to issue an appropriate writ or order or direction particularly in the nature of Writ of Mandamus declaring the action of the 2nd respondent in withdrawing the benefit of exemption of Central Tax granted to the petitioner through the final eligibility certificate by passing the impugned revision order in proceedings RV No.43/ 05-06/A6 dt. 17-9-2005 for the assessment year 2002-2003 and demanding tax on the turnover of inter-state sale of cashew kernel processed by the petitioner in its unit as illegal, arbitrary and without authority of law and jurisdiction and set aside the same and also declare that the petitioner's product viz., Small White Pieces (S.W.P) [cashew kernel pieces] is entitled for sales tax exemption in terms of the final eligibility certificate granted by the 3rd respondent and pass such other order or orders as the Hon'ble court may deem fit and proper in the circumstances of the case."

"For the reasons stated above, it is prayed that this Hon'ble Court may be pleased to issue an appropriate writ or order or direction particularly in the nature of Writ of Mandamus declaring the action of the 2nd respondent in withdrawing the benefit of

exemption of Central Tax granted to the petitioner through the final eligibility certificate by passing the impugned revision order in proceedings RV No.2/ 05-06/A6 dt. 17-9-2005 for the assessment year 2000-2001 and demanding tax on the turnover of inter-state sale of cashew kernel processed by the petitioner in its unit as illegal, arbitrary and without authority of law and jurisdiction and set aside the same and also declare that the petitioner's product viz., Small White Pieces (S.W.P) [cashew kernel pieces] is entitled for sales tax exemption in terms of the final eligibility certificate granted by the 3rd respondent and pass such other order or orders as the Hon'ble court may deem fit and proper in the circumstances of the case."

It appears that subsequent to the impugned order i.e., on 08-03-2006, the Industries Department issued an amended eligibility certificate under the terms, of which admittedly, both the processing of cashew nuts and cashew kernel, are recognized to be the activities, which are entitled for the benefits given under G.O.Ms.No.108, referred to above.

Apart from that, on behalf of the Industries Department, the 3rd respondent filed a counter accepting the claim of the petitioner that the process of both cashew nut and cashew kernel are activities, which are entitled for the benefits under the G.O,.No.108.

The learned Government Pleader appearing for the first two respondents, however, argues that the certificate as originally issued in favour of the petitioner on

10-08-2000 mentions that only the process of cashew nut is entitled to be extended for the benefits under the

G.O.Ms.No.108, but not for cashew kernel and the amended certificate, which was issued on 08-03-2006 may not have the effect of giving the benefit of the G.O., to the petitioner retrospectively.

We regret our inability to accept the submission made by the leaned Government Pleader appearing for the first two respondents. The certificate of eligibility is only a piece of evidence that the petitioner is entitled for the various activities carried on by him. For, the benefits conferred under G.O.Ms.No.108, are not the benefits created by the certificate *per se*, but under the G.O. If the petitioner or, as a matter of fact, any other assessee, is entitled for the benefits under this G.O., or any other law for that matter, the same cannot be denied on the ground that some Department or an Officer of the State does not understand or recognize the correct legal position. The certificate, at best, is the understanding of the Officer, who issued the same, about the applicability of the abovementioned G.O. At any rate, as on today, the Industries Department of the State, is also of the opinion that both the processes carried on by the petitioner are covered by the terms of the G.O.

In the circumstances, we do not see any merits in the submission made by the learned Government Pleader for Commercial Tax and the writ petitions are liable to be allowed.

Accordingly, all the four writ petitions are therefore, allowed as prayed for.

J.Chelameswar, J

D.Appa Rao, J

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7th December 2006